

ESTATE OF HAH-TAH-E-YAZZA
(NAVAJO ALLOTTEE NO. 011358, DECEASED)

IBIA 73-12

Decided November 2, 1973

Petition to reopen.

Denied.

Indian Probate: Reopening: Waiver of Time Limitation

Petition to reopen filed more than three years after the final determination of heirs will not be granted unless there is compelling proof that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

Indian Probate: Reopening: Waiver of Time Limitation

It is in the public interest to require Indian Probate proceedings be concluded

within some reasonable time in order that property rights of heirs and devisees in Indian allotments be stabilized.

APPEARANCES: Dinebeiina Nahiilna Be Agaditahe, Inc., by Richard P. Fahey, Esq., for appellant, Wallace Buck.

OPINION BY MR. WILSON

This matter comes before the Board upon a petition for reopening of probate filed by Richard P. Fahey, Esq., for and in behalf of Wallace Buck, pursuant to 43 CFR 4.242.

The estate having been closed for more than three years the matter was properly forwarded to the Board by Administrative Law Judge Richard B. Denu in accordance with the provisions of 43 CFR 4.242(h).

At the outset it is noted that the petition is being filed some 34 years after the decedent's estate was probated. The decedent, according to the record, died intestate February 28, 1910. Due presumably to lack of communication his death was belatedly reported on or about March 17, 1939, at which time his estate was probated.

In support of his petition to reopen the petitioner alleges that he had no notice of the probate proceedings and that it was only in 1972 that he learned of the decedent's allotment and the proceeding held in connection therewith.

There is nothing in the petition or the probate record indicating any effort on the part of the petitioner over the period of some 33 years to inquire into, or assert any right, or claim he may have had in the estate. Furthermore, there is nothing in the petition or the probate record to indicate the petitioner was under a disability due to minority or lack of competence during the 33 years which would have precluded him from inquiring into or asserting any right or claim he may have had in the estate. Moreover, there is nothing in the petition to show the existence of a manifest injustice resulting from the omission of the petitioner as an heir in the estate.

The Department of the Interior over the years has consistently adhered to a strict policy of refusing to entertain appeals not timely filed. Estate of Ralyen Rabyea Voorhees, 1 IBIA 62 (1971). The same policy is applicable to petition for reopening filed beyond the three-year limitation provided in the regulations, Estate of George Minkey, 1 IBIA 1 (1970), affirmed on reconsideration, 1 IBIA 56 (1970).

The Board is cognizant and mindful of the Secretary's power under 25 CFR 1.2 to waive and make exceptions to his regulations in Indian Probate matters. However, such authority or power will be exercised only in cases where the most compelling reasons are present. Estate of Charles Ellis, IA-1242 (April 14, 1966), Estate of George Minkey, *supra*. Reopening of estates will be permitted only where it appears that the petitioner has not been dilatory in seeking his remedy. Estate of Alvin Hudson, IA-P-17 (May 29, 1969) Estate of George Squawlie (Squally), IA-1231 (April 5, 1966); Estate of George Minkey, *supra*; Estate of Sophie Iron Beaver Fisherman, 2 IBIA 83 (October 16, 1973).

Moreover, the public interest requires Indian Probate proceedings be concluded within some reasonable time in order that property rights of legitimate heirs and devisees be stabilized. Estate of Abel Gravelle, IA-75 (April 11, 1952). To hold property rights of heirs to allotted lands forever subject to challenge, would not only constitute an abuse, but would seriously erode the property rights of those whose heirship in lands has already been determined. Estate of Samuel Picknoll (Pickernell), 1 IBIA 168, 78 I.D. 325 (1971).

It is the finding of the Board that the petition for reopening falls short of meeting the requisite standards or criteria set forth

in the above cited cases and, consequently, does not justify the exercise of Secretarial discretion to waive the three-year limitation contained in 43 CFR 4.242(a). Accordingly, the petition must be denied.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition to reopen filed by William Buck is DENIED and the order determining heirs entered under date of March 17, 1939 is AFFIRMED.

This decision is final for the Department.

Alexander H. Wilson, Member

I concur:

Mitchell J. Sabagh, Member